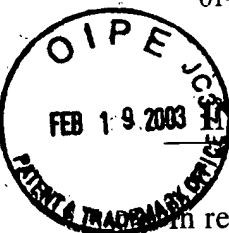


PATENT  
01-9343



25189

PATENT TRADEMARK OFFICE



# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:  
TULLER et al.

Serial Number: 09/923,469

Examiner: MATHEW, F.C.

Filed: 08/06/2001

Art Unit: 3764

Confirmation No.: 1536

For: **ABDOMINAL EXERCISE MACHINE**

BOX NON-FEE AMENDMENT

Commissioner for Patents

Washington, D.C. 20231

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TECHNOLOGY CENTER R3700

## **RESPONSE TO RESTRICTION REQUIREMENT OFFICE ACTION DATED 12/13/2002**

Dear Sir:

Responsive to the Office action restriction requirement dated December 13, 2002, Applicants provisionally elect to prosecute Group V, corresponding to Figures 7- 8 inclusive, as indicated by the Examiner, but traverses the restriction requirement.

The invention is generally directed to an abdominal exercise devise that uses a restoring force between two laterally extended members. There are several embodiments of this inventive concept made manifest in the claims. The Examiner has apparently used Applicants' different embodiments as a basis for a restriction requirement. However, Applicants believe that such a restriction requirement based upon alternative embodiments defeats efficient prosecution and increases the burden upon Applicants in an undue manner.

Figures 1-8 all go to an abdominal exercise device having a central restoring or semi-rigid member flexed and articulated between upper and lower extending members. A variety of different embodiments occur including the use of padded rollers in Figure 3, rotatable handles in Figure 4, certain alternative embodiments and joints in Figures 5, 6, and 6a as well as a ball joint assembly embodiment in Figure 7 and 8.

Figures 9 and 10 show alternative embodiments and additional enhancements to the underlining theme of having a central restoring force member in the form of a semi rigid member.

Consequently, Applicants believe that the requirement that the application be restricted to certain ones of the figures is not well met and indeed, misplaced. Thus, with respect to groups I-VII, Applicants believe that these alternative embodiments should be examined together and the Examiner is requested to reconsider his position in this regard.

It is respectfully submitted that the restriction requirement is improper and should be withdrawn. All the figures in the application are closely related and should and could be examined together for reasons of efficiency and economy and to avoid a later charge of double patenting. Furthermore, the Examiner has failed to show that there would be a "serious burden" if all the figures were examined together. "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits even though it includes claims to distinct or independent invention." (M.P.E.P. § 803).

Furthermore, in *In re Lee*, 199 U.S.P.Q. (BNA) 108 (Comm'r Pat. & Trademarks 1978), in a restriction requirement situation, the Commissioner stated:

" . . . it is important from the standpoint of public interest that no restriction requirements be made which might result in the issuance of two patents of the same

invention. The nullification of double patenting as a ground of rejection provided for in the third sentence of 35 U.S.C. 121 imposes a heavy burden on the Office to guard against erroneous requirements for restriction where the claims define essentially the same invention and which if acquiesced in might result in more than one patent for essentially the same invention with attendant prolongation of patent monopoly."

In the instant case, it is submitted that there is but a single invention with respect to the abdominal exercise device of the present invention and that all embodiments in the present application have the same inventive concept in common, differing only in incidental design aspects which do not detract from the overall design concept.

The Examiner is respectfully requested to reconsider the restriction requirements in view of the foregoing.

If the Examiner believes that a telephone conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicants invite the Examiner to contact Applicants' representative at the number listed below.

With the above-referenced changes, it is believed that the application is in a condition for substantive examination and allowance; and Applicants respectfully request

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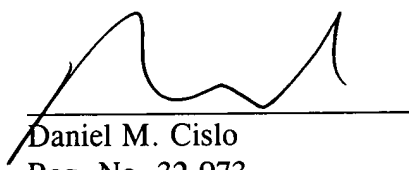
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the Examiner to pass the application on to allowance. It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicants' attorney's deposit account no. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Date: February 11<sup>th</sup>, 2003

  
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